

STATE OF MICHIGAN  
COURT OF APPEALS

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MARSHALL POPE, Personal Representative of  
the Estate of Chris' Sha Patricia Johnson,  
Deceased,

Plaintiff-Appellant,

v

FAMILY INDEPENDENCE AGENCY,

Defendant-Appellee.

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UNPUBLISHED

August 17, 1999

No. 205898

Court of Claims

LC No. 97-16591-CM

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIUM.

Plaintiff appeals as of right from the Court of Claims' order granting summary disposition on the basis of governmental immunity. We affirm.

On August 17, 1995, Chris'Sha Johnson, decedent, was made a temporary ward of the court due to neglect and was removed from her parents' custody. She was placed in the care and custody of a foster home on July 14, 1996. On October 12, 1996, Chris'Sha Johnson was beaten to death by a boy in the foster home. This action was filed against defendant Family Independence Agency (FIA) in the Court of Claims.<sup>1</sup>

The FIA filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). The court granted the motion and dismissed the claim with prejudice.

MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties. MCR 2.116(G)(5); *Green v Berrien General Hosp Auxiliary, Inc*, 437 Mich 1, 4 at n 4; 464 NW2d 703 (1990). MCR 2.116(C)(8), failure to state a claim upon which relief can be granted, tests the legal sufficiency of the complaint and allows consideration of only the pleadings. MCR 2.116(G)(5); *Scameheorn v Bucks* 167 Mich App 302, 306; 421 NW2d 918 (1988). Under both MCR 2.116(C)(7) and (8), all well-pleaded allegations are accepted as true, and construed most favorably to the nonmoving party. *Scameheorn, supra* at 306; *Haywood v Fowler*, 190 Mich App 253, 256; 475

NW2d 458 (1991). A court may only grant a motion pursuant to MCR 2.116(C)(8) where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Scameheorn, supra* at 306. Accordingly, in order to survive a motion for summary disposition, a party must allege facts justifying application of an exception to governmental immunity. *Ross v Consumers Power Co* (On Rehearing) 420 Mich 567, 621, n 34; 363 NW2d 641 (1984); *Gibson v Grand Rapids*, 162 Mich App 100, 103; 412 NW2d 658 (1987).

Governmental agencies are immune from tort liability in all cases where the agency is engaged in the exercise or discharge of a governmental function unless a statutory exception applies. MCL 691.1407; MSA 3.996(107). “Governmental function” is an activity which is expressly or impliedly mandated by statute or other law. MCL 691.1401(f); MSA 3.996(101)(f). The FIA was engaged in a governmental function mandated and authorized by statute, i.e., the supervision of a foster care placement of a temporary court ward in a licensed foster care home. MCL 400.18 (c); MSA 16.418(3); MCL 722.621, *et seq.*; MSA 25.248(1), *et seq.* Since the FIA was clearly engaged in a governmental function, this Court must then examine the complaint to determine whether the plaintiff has alleged any facts justifying the application of any statutory exceptions to the agency’s immunity. *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992).

Plaintiff’s reliance on *Ross, supra*, is erroneous. *Ross* established that lower level employees of governmental bodies are immune from tort liability when they are acting during the course of their employment, within the scope of their authority, in good faith, and performing discretionary, as opposed to ministerial acts. *Id.* at 631. Thus, plaintiff argues gross negligence on the part of the state’s employees and asserts that the state is vicariously liable because its subordinate employees were engaged in ministerial-operational acts for which there is no tort immunity.

However, the *Ross* decision has been superseded by the Governmental Tort Immunity Act. MCL 691.1401 *et seq.*; MSA 3.996(101) *et seq.*, *Peters v Bay Fresh Start, Inc*, 161 Mich App 491, 411 NW2d 463 (1987). The Governmental Tort Immunity Act provides that “all governmental agencies shall be immune from tort liability in all cases wherein the government is engaged in the exercise or discharge of a governmental function.” MCL 691.1407(1); MSA 3.996(107)(1). The only exceptions to the agency’s immunity, when it is engaged in a governmental function, involve defective public highways, MCL 691.1402; MSA 3.996 (102); negligent operation of a government owned motor vehicle, MCL 691.1405; MSA 3.996 (105); or, defective public building, MCL 691.1406; MSA 3.996 (106).

Plaintiff’s complaint against the FIA must fail as a matter of law because it is barred by governmental immunity. MCL 691.1407; MSA 3.996(107). The complaint

does not allege any facts justifying the application of any exceptions to the agency's immunity. The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Roman S. Gibbs

/s/ Michael J. Kelly

/s/ Harold Hood

<sup>1</sup> The plaintiff filed two separate actions regarding this matter. Another action was filed against the individual social workers and foster mother in the Wayne County Circuit Court (Case No. 97-707270-NO).